PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

AO 241 (Rev. 5/85)

CA 06 292 S

United States District Court	District Rhode Island	
Name Linde Eddie M.	Prisoner No. 119267	Case No. P1/01-3914 AG

Place of Confinement Adult Correctional Institutions R.I. Maximum Security P.O. Box 8273 Cranston R.I. 02920

Name of Petitioner (include name under which convicted)	Name of Respondent (authorized person having custody of petitioner)
Eddie M. Linde	v. Asbel T. Wall, in his capacity as Director of R.I. Dept of Corrections.

The Attorney General of the State of: Rhode Island

U.S. DISTRICT COURT DISTRICT OF RHODE ISLAND

PETITION

1. Name and location of court which entered the judgment of conviction under attack Providence County Superior Court, Licht Judicial Complex 250 Benefit St. Prov. R.I. 02903

2. Date of judgment of conviction October 1, 2002

3. Length of sentence Total Sentence: a life sentence plus 40 years consecutive (with 20 to serve), later reduced to life plus 10 years consecutive

4. Nature of offense involved (all counts) 2nd degree murder; discharging a firearm while committing a crime of violence; ~~assult~~ assault with intent to murder; using a firearm while committing a violent crime (3 counts); Felony assault (2 counts); carrying a pistol without a license

5. What was your plea? (Check one)
   (a) Not guilty ☒
   (b) Guilty ☐
   (c) Nolo contendere ☐
   If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
   (a) Jury ☒
   (b) Judge only ☐

7. Did you testify at the trial?
   Yes ☒ No ☐

8. Did you appeal from the judgment of conviction?
   Yes ☒ No ☐

AO 241 (Rev. 5/85)

9. If you did appeal, answer the following:

(a) Name of court Rhode Island Supreme Court

(b) Result Appeal denied and dismissed

(c) Date of result and citation, if known July 7, 2005 State V. Linde, 876 A.2D 1115 (R.I. 2005)

(d) Grounds raised Failure to Suppress evidence seized from a warrantless Search; Failure to instruct on self Defence where warranted by the evidence

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court ______

(2) Result ______

(3) Date of result and citation, if known ______

(4) Grounds raised ______

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court ______

(2) Result ______

(3) Date of result and citation, if known ______

(4) Grounds raised ______

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Providence Superior Court

(2) Nature of proceeding Motion to Reduce Sentence Under R.I. Rule Crim. Pro. 35

(3) Grounds raised Excessiveness of Sentence

AO 241 (Rev. 5/85)

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☒ No ☐

(5) Result Motion granted; Murder Sentence reduced; relief could not be granted on mandatory life sentence

(6) Date of result January 12, 2006

(b) As to any second petition, application or motion give the same information:

(1) Name of court Providence Superior Court

(2) Nature of proceeding Application For Post-Conviction Relief File No. 06 1553

(3) Grounds raised Ineffective Assistance of Trial Counsel; Unconstitutionality of one of the statutes under which I was sentenced; Petition may be amended if counsel enters appearance in the matter

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒ It is still pending

(5) Result

(6) Date of result

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?
(1) First petition, etc. Yes ☐ No ☒
(2) Second petition, etc. Yes ☐ No ☒

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:
I have not been to Court yet on Post-Conviction
I won the Motion to Reduce Sentence

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

AO 241 (Rev. 5/85)

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted you state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self–incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(i) Denial of effective assistance of counsel.

(h) Denial of right of appeal.

A. Ground one: Ineffective assistance of Trial Counsel (This ground still Pending in State Court).

Supporting FACTS (state *briefly* without citing cases or law) My Attorney Failed, For example: To raise the intoxication defence; To adequately investigate the case; To present all necessary evidence and witnesses on my behalf; To raise every issue that should have been raised; To argue prosecutorial Misconduct. Though he promised I would go home with my wife if I paid him $40,000.00 Cash For his representation, he Failed to perform his Job in a competent-Professional manner.

B. Ground two: The unconstitutionality of R.I.G.L. S 11-47-3.2 (b)(This ground is still Pending in State Court).

Supporting FACTS (state *briefly* without citing cases or law) The Trial Judge did not want to give me a mandatory life Sentence For discharging a Firearm while committing a crime of violence (The 2nd degree murder), But said he was "Trapped" by the Statute, This statute violates Double Jeopardy; Due Process; Cruel and unusual Punishment; Separation of Powers, and other Provisions, of the U.S. and R.I. Constitutions

AO 241 (Rev. 5/85)

C. Ground three: Conviction obtained through evidence obtained in an unconstitutional search and seizure

Supporting FACTS (state *briefly* without citing cases or law) The Trial Judge refused to suppress evidence seized from underneath my mattress in a warrantless search of a motel room I shared with a co-worker, even though only my co-worker consented to the search

D. Ground four: Judge refused to instruct Jury on self Defense

Supporting FACTS (state *briefly* without citing cases or law) A trouble maker had severely injured me before the shooting. I was in fear for my life at the time of the shooting; I was intoxicated to the level of incoherent. I had lost my eye glasses earlier that night and had no idea what I had signed as far as statements to the police as I can Not read with out them

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: Although I have Filed my application For Post-Conviction Relief Pro-se, IF Counsel enters his appearance on my behalf he may amend the petition to make further arguments.

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☒ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing Paul J. DiMaio, 215 Broadway, Prov. R.I. 02903

(b) At arraignment and plea Paul J. DiMaio (see Above)

AO 241 (Rev. 5/85)

(c) At trial Paul J. Dimaio, 215 Broadway Prov. R.I. 02903

(d) At sentencing Paul J. Dimaio (see Above)

(e) On appeal Catherine Gibran, Assistant Public Defender, 160 Pine St. Providence R.I. 02903

(f) In any post-conviction proceeding On Motion to Reduce Sentence: John Lovoy, Assistant Public Defender 160 Pine st. Prov, R.I. 02903, On Application For Post Conviction Relief: Pro se, but Mr. Lovoy may be entering his appearance.

(g) On appeal from any adverse ruling in a post-conviction proceeding

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒ No ☐ Application For Post Conviction Relief Pending

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Eddie M Linde
Pro Se Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

May 31, 2006
(date)

Eddie M Linde
Signature of Petitioner

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

EDDIE M. LINDE :

v. : No. ____________

ASBEL T. WALL,
In his capacity as the :
Director of the Rhode Island
Department of Corrections :

On Appeal From a Judgment of
Conviction Entered In the Rhode Island
Superior Court in Case # P1/01-3914 AG

BRIEF OF THE PETITIONER, EDDIE M. LINDE ON GROUNDS 3 AND 4 OF PETITION

Eddie M. Linde
Pro Se
P.O. Box 8273
Cranston, RI 02920